IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTIETH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION NO : 10424 of 2004

Between:

Menavalluru Gram Panchayath, Rep.by its Sarpanch P. Dhasaradhudu,
Pentapadu Mandal, West Godavari District.

..... PETITIONER

AND

1 The District Collector, West Godavari, Eluru, West Godavari District.
2 The District Panchayat Officer, West Godavari, Eluru,
West Godavari District.
3 The District Development Officer, Pentapadu Mandal, West Godavari

District.

4 The Mandal Parishath Development Officer, Pentapadu Mandal, West

Godavari District.

5 Reddi Srinivasu, S/o Dharma Raju, Gram Panchayat Member,

Menavalluru Gram Panchayat, Pentapadu Mandal, West Godavari Dist.

6 Vundavalli Srinivasa Rao, S/o Venkata Rao, R/o Menavalluru village,

Pentapadu Mandal, West Godavari District.

(Respondents 5 and 6 are impleaded by Court order dated 10.11.2004 in

W.P.M.P.No.25637 of 2004)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to

issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents herein as illegal, arbitrary null and void and contrary to the provisions of Panchayat Raj Act 1994 and consequently direct the respondents to obtain the opinion of the Gram Panchayat before taking any such decision.

Counsel for the Petitioner: MR.C.V.MOHAN REDDY

Counsel for the Respondents 1 to 4: GP FOR PANCHAYAT RAJ Counsel for respondents 5 and 6 : Mr.B.Devanand

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10424 OF 2004

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ORDER:

Menavalluru Gram Panchayat in Pentapadu Mandal of West Godavari District filed the present writ petition questioning the action of the second respondent in directing the third respondent to immediately shift the office of Gram Panchayat from the rented building to own building of Gram Panchayat vide proceedings dated 11.06.2004 as illegal and contrary to the provisions of A.P.Panchayat Raj Act, 1994 (for short, the Act) and for a direction to the respondents to obtain the opinion of the Gram Panchayat before taking any such decision. Fifth respondent, who is the member of the fourth ward of Menavalluru Gram Panchayat and sixth respondent, who is the Director of Menavalluru Water Users Committee, were impleaded later and they opposed the writ petition contending that the Gram Panchayat office is very much available and therefore there is no necessity to run the office in a rented building.

It is a settled principle of law that matters like establishment of Mandal headquarters, Gram Panchayat office, hospitals etc., lack adjudicative disposition and therefore ordinarily they are not justiciable in an application for judicial review. These matters are left for the appropriate executive authority and unless the action of the executive authority is vitiated by proven *mala fide*, this Court cannot enter the field and interdict with such decisions. Further, there cannot be any dispute that *ipsi dixit* of a person aggrieved or the perceived hardship that might be caused due to impugned action, is no ground for issue of mandamus declaring the action of the competent authority in establishing a Gram Panchayat office at its own building as

illegal. Keeping these settled principles in mind, the controversy in this case need to be examined.

The fact of the matter is not in dispute. The Gram Panchayat initially situated in pucca library building. On 03.10.2003, the Sarpanch, who deposed the affidavit on behalf of Gram Panchayat, allegedly convened the meeting of Gram Sabha, wherein resolution was passed to shift the Gram Panchayat office to a private building of Maddipati Krishna Murthy, S/o Surya Rao, on the ground that the library building is in dilapidated condition and there is no safety for the records due to rain. On 17.10.2003, the Gram Panchayat allegedly passed similar resolution. It is also the case of the petitioner that the second respondent issued proceedings on 17.11.2003 granting permission for such shifting to a private building. The Gram Panchayat office was accordingly shifted to the new building, which according to the petitioner is situated in the centre of the village. Subsequently, the second respondent issued the impugned proceedings and directed the third respondent to shift the Gram Panchayat office to the library building. In support of the writ petition, the petitioner contends that the second respondent is influenced by the local political people and that he acted *mala fide.* It is also contended that the impugned action is illegal and arbitrary, and contrary to the provisions of the Act. Further in paragraph six of the affidavit, the petitioner states as under.

> It may not be out of place mention here that once the elected members have passed a resolution to shift the than existing office of the Gram Panchayat to a new premises in the village, due to valid reasons and the same was permitted by the Government, the respondents authorities do not have any right to direct to shift the Gram Panchayat to old building is an arbitrary manner, moreover the old Library Building is still lying in more dilapidated condition and is not fit for locating any office in it. The villagers and the Gram Panchayat members are not interested to shift the Gram Panchayat Office from the existing building to the old Library Building where no meeting can be conducted nor records can be safeguarded, unless the same is repaired are renovated. The Gram Panchayat is being benefited since the existing premises was given free of rent by one of the village, who is not related to any of the Gram Panchayat members.

The second respondent filed counter affidavit stating that the three ward members and M.P.T.C. members gave a complaint to the second respondent stating that the Gram Panchayat office was functioning in the original building since 1970 and that the Sarpanch has shifted the Gram Panchayat office to another building for his convenience. Considering said representation, instructions were issued to the Extension Officer (Panchayat Raj), Pentapadu Mandal to re-shift the Gram Panchayat office to the original building, and accordingly on 19.06.2004, the Extension Officer has shifted the Gram Panchayat office to the original building duly reporting compliance to the District Collector on 21.06.2004. The allegation made by the petitioner that Gram Panchayat passed resolution to shift the Gram Panchayat office to a rent free building is denied. It is further asserted that the sarpanch has tampered with the records by inserting the resolutions and by removing the earlier resolutions, basing on which he obtained orders from the second respondent on

17.11.2003. The second respondent issued proceedings on 17.11.2003 basing on the representation by the Panchayat Secretary along with forged resolution passed by the Gram Panchayat on 17.10.2003. The rent free building offered by Krishna Murthy is adjacent to the house of the petitioner. Considering all these aspects, the earlier proceedings were modified and directions were issued to the Extension Officer to re-shift the office of the Gram Panchayat to original Grandhalaya building. A reference is also made in the counter affidavit to the report of the Mandal Engineering Officer, who inspected the building at the request made by the third respondent and gave a report dated 02.07.2004 to the effect that the building requires some minor repairs and the Gram Panchayat office may be continued in the same building.

Respondents 5 and 6 in their affidavit opposing the writ petition state that in 1970, the Gram Panchayat constructed a building for panchayat office where it was continuing. In 2003, the Gram Panchayat office was shifted to private building of Maddipati Krishna Murthy on the ground that the building is in dilapidated condition. The building is not in dilapidated condition and only small repairs are required, and for all these years, there is no complaint from the villagers regarding the non-accessibility to anybody. The sarpanch and his men with ulterior motive planned to shift Gram Panchayat office to private building of Maddipati Krishna Murthy, who is brother-in-law of Sri Putta Ramesh Babu, the member of first ward of Gram Panchayat. This is contrary to the Rules. The Gram Panchayat office was shifted to private building to facilitate the ex-sarpanch of the village to acquaint with the Panchayat records. The ex-sarpanch is a neighbour of the private building into which the Gram Panchayat office was shifted. The villagers, who are feeling inconvenience made a report to the sarpanch, Panchayat Secretary and ward members bringing their notice the difficulties faced while going to the Panchayat office, in vain. Therefore, they represented to the officials and peoples representatives to take appropriate action to shift the office to Panchayat building. Accordingly, orders were passed in the interest of public and to protect the Government records.

The petitioner has not chosen to file any reply affidavit denying the counter averments of the second respondent as well as respondents 5 and 6. The petitioner has also not made any attempt to deny the allegation that the resolution dated 17.10.2003 has been tampered with. Be that as it is, the learned Assistant Government Pleader has produced Menavalluru Gram Panchayat minutes book in original. Along with the writ petition, the petitioner has enclosed a true copy of resolution of the Gram Panchayat dated 17.10.2003 in relation to agenda item No.93. It is to the effect that the Gram Panchayat decided to shift the office to the building of Maddipati Krishna Murthy on rent free basis as the library building is in dilapidated condition and there is no safety for the records due to rain. A perusal of minutes book would reveal that in meeting of Gram Panchayat on 17.10.2003, item No.84 to item No.95 were considered (On 09.01.2004, there was another meeting wherein item No.96 onwards were considered). At page No.82, resolutions in support of the items 92 to 95 were recorded but in the original book produced, there is a clear tampering. The description of item Nos.93, 94 and 95 have been erased

and the agenda item regarding shifting of the office to private building is overwritten after erasing earlier matter. Further, in support of agenda items from 84 onwards, the resolution is “resolution passed”, whereas in respect of the alleged shifting of the Gram Panchayat office, the entire agenda item has been reproduced in a different handwriting, which would certainly supports the view of tampering of the official records. These conclusions are well supported by a reference to Panchayat Agenda book at page No.49. Tampering of official records like Gram Panchayat office is a serious offence and respondents 1 and 2 should look into this matter and initiate appropriate action against those responsible for such tampering of minutes book.

After perusing the minutes book, this Court is convinced that there was no resolution on 17.10.2003 by the Gram Panchayat for shifting of office from the library building to the private building of Maddipati Krishna Murthy. The said Krishna Murthy – in the absence of any denial – is brother-in-law of Putta Ramesh Babu, member of first ward. As per Part I of the Rules regarding Proceedings of Gram Panchayats and their Committees thereof, promulgated vide G.O.Ms.No.227 dated 13.04.1995 (hereafter called, the Rules), no building belonging to sarpanch, upa-sarpanch and members or their relations shall be used for the office of the Gram Panchayat without prior approval of the District Collector. Therefore, in any view of the matter when the Gram Panchayat approached the second respondent through the fourth respondent and obtained the proceedings dated 17.11.2003 for permission for such shifting, the same is vitiated by misrepresentation and fraud. Therefore, the second respondent was amply justified in issuing the proceedings dated 11.06.2004 directing the Extension Officer to re-shift the office to library building.

Learned counsel for the petitioner, Sri C.V.Mohan Reddy, submits that there was no power vested in respondents 1 and 2 to annul the resolution of the Gram Panchayat and that such power is conferred only on the Government under Section 246 of the Act. According to the learned counsel, the impugned proceedings amounts to nullifying the resolution dated 17.10.2003. In view of the finding as above that the resolution does not exist in the minutes book, which was tampered with and interpolated, this submission need not be considered. Further, in the affidavit, no such ground is urged. Secondly, it is contended by the learned counsel for the petitioner that the allegations of forgery or tampering are made in the counter affidavit and in the absence of any such allegation in impugned order, such a ground cannot be a basis to sustain the impugned order. I am afraid, the reliance placed in this regard on the decision of the Supreme Court in **Mohinder Singh Gill v Chief Election Commissioner** is misconceived. The second respondent issued orders to re-shift the office from the private building to the Gram Panchayat building and in coming to such conclusion, the second respondent has conducted some enquiry, which has formed the basis and in such enquiry, the second respondent came to the conclusion that as the resolution was tampered with. The principle in **Gills case** (supra) in such a case has no application. It must be remembered that the order passed in exercise of statutory power (statutory order like an appeal or revision) is altogether different from an order, which is a routine administrative matter. Such being the case, the principle laid down in **Gills case** (supra) has no application and

it is always open for the contesting respondents to explain the reasons, which lead to passing of the impugned order. Further as stated in the counter affidavit of the second respondent, the Gram Panchayat office has already been shifted to the library building and with few repairs as suggested by Mandal Engineering Officer, the same is well suited as Gram Panchayat office. The Court would not be inclined to prevent the respondents to explain the reasons, especially when the order passed is essentially an administrative order. (See **Sachidanand Pandey v State of West Bengal**) Therefore, the submission is rejected as misconceived.

The writ petition is filed by the sarpanch, who has approached this Court with unclean hands, based on a proceeding, which he obtained by producing the tampered resolution. This Court, therefore, is not inclined to exercise its discretion, especially in a matter regarding the shifting/re-shifting of the Gram Panchayat office, in favour of petitioner.

The writ petition is devoid of merit, and subject to the observations made hereinabove, dismissed. The interim order shall stand vacated.

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(V.V.S.RAO,J)

30.11.2004.

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To

1. The District Collector, West Godavari at Eluru, West Godavari District.
2. The District Panchayat Officer, West Godavari at Eluru, West Godavari District.
3. The District Development Officer, Pentapadu Mandal, West Godavari District.
4. The Mandal Parishad Development Officer, Pentapadu Mandal, West Godavari District.
5. 2 CCs to the G.P. for Panchayat Raj, High Court Buildings, Hyderabad (OUT).
6. 2 CD copies.